

### **Rule 3, Ariz. R. Crim. P.**

#### **Investigatory stops – No such thing as “Pretext stops”.....Revised 12/2009**

When the police have probable cause to believe that a driver has committed a civil traffic violation, the police may conduct an investigatory stop of the driver's vehicle, regardless of the officers' actual subjective motivations. *Whren v. United States*, 517 U.S. 806 (1996); see also *Jones v. Sterling*, 210 Ariz. 308, 310-311, ¶¶ 8-11, 110 P.3d 1271, 1273-74 (2005). In *Whren v. United States*, the police were patrolling a “high drug area” when they saw a truck turn suddenly, without signaling, and drive off at an unreasonable speed. 517 U.S. at 808. The officers stopped the truck, walked up to the driver's door, and saw large bags of crack cocaine in plain view in Whren's hands. *Id.* at 808-09. The defendants argued that the officers lacked probable cause, or even reasonable suspicion, to believe that the truck's occupants were involved in illegal drug activity, and claimed that the “asserted ground for approaching the vehicle – to give the driver a warning concerning traffic violations – was pretextual.” *Id.* at 809. The Supreme Court held, “[T]he Fourth Amendment's concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, whatever the subjective intent.” *Id.* at 814. Because the officers had probable cause to believe that the driver had violated traffic or vehicle safety regulations, they had probable cause to stop the vehicle. The fact that the officers may have had ulterior motives was irrelevant:

Petitioners urge as an extraordinary factor in this case that the “multitude of applicable traffic and equipment regulations” is so large and so difficult to obey perfectly that virtually everyone is guilty of violation, permitting the police to single out almost whomever they wish for a stop. But we are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement. And even if we could identify such exorbitant codes, we do

not know by what standard (or what right) we would decide, as petitioners would have us do, which particular provisions are sufficiently important to merit enforcement.

For the run-of-the-mine case, which this surely is, we think there is no realistic alternative to the traditional common-law rule that probable cause justifies a search and seizure.

*Whren*, *supra* at 818-19.

*Whren* eliminated the “pretext defense,” not only in traffic stop situations, but also in warrant stop arrests. “Both federal and Arizona case law clearly allow police to use valid, preexisting traffic warrants to effect an arrest, even if the arrest is made to investigate other suspected crimes.” *State v. Spreitz*, 190 Ariz. 129, 144, 945 P.2d 1260, 1275 (1997). If the initial stop of a defendant was proper under *Terry*, officers can conduct a limited search for weapons reasonably related to the scope of the stop. *State v. Clevidence*, 153 Ariz. 295, 298, 736 P.2d 379, 382 (App. 1987).